

**EXHIBIT "42"**

**From:** Sepenuk, John  
**Sent:** Tuesday, April 11, 2006 04:05 PM  
**To:** 'asa.suehira@aniplex.jp'  
**Subject:** FW: Kiba Eps 1-4 Critique  
**Attachments:** Kiba First Four Critique.doc

Asa,

Please see the e-mail below and attached critiques of Episodes 1-4. We are extremely concerned at the direction the property is headed and feel like our input is not being taken into consideration sufficiently to justify continued investment in Kiba. After seeing the first few episodes, Tomy Japan has seemed to have lost interest in the ganka toy candy category as they believe it is for a much older audience than the core demographic for that category. We are anticipating a similar response for capsule vending machine toys from Tomy as well.

Mattel and Playmates in the US, with whom we have both gotten very excited about the property based upon what we thought it would be and what we were told it would be, will surely lose interest once they see how little action there is in the first four episodes. Reading through scripts up through episode 16, it doesn't get any better. They are both asking to see episodes, and I can't show them anything yet, nor do I feel confident we will anytime soon.

As for broadcasting in the US, this is Adult Swim on CN at best. Even if we are able to spend a lot of money to reduce the level of violence, murder, and dead bodies shown on the ground, the pacing is just too slow to be placed in a kid-friendly time slot.

We entered into this project for one principle reason, to sell Trading Card Games. While I realize that the show needs to get ratings into order to survive, I don't believe that action and ratings are mutually exclusive. DBZ is one of the highest rated anime programs outside of Japan, has nothing but action, sells lots of DVD's and merchandise, and is enjoyed by a broad demographic.

As I am going through the contracts with our attorneys, financial officers, and board of directors, given the complete disconnect from what we have asked for and what we are receiving, I cannot in good faith argue to them that we will see a return on our investment in any area- Trading Card Games in particular. One of two things needs to happen in order to turn this project around and give Upper Deck a chance to succeed financially. Either the creative direction of the anime production needs to change- i.e. get a new script writing team that is targeting a younger audience (which is exactly what we were promised when we agreed to allow you to move to the Sunday morning time slot) and incorporate not only more action, but more appropriate fighting action scenes that mirrors our game. The other option is to just become a licensee for the TCG rights and let the broadcasting and merchandising rights revert back to Aniplex. The only reason that we would hold on to the TCG rights at this point is because of all of the time and money spent developing our game.

We get pitched new properties to develop trading card games almost weekly, and I can tell you that if somebody tried to pitch us Kiba now in its present form to get a TCG license, we would pass. Given the amount of time, money, and energy we have committed to this project to build a TCG-centric IP, this is really disappointing.

While Ken is also working with Kamagata to try to find a solution to this problem, as you and I are the people in charge of finalizing these contracts, I am looking to you for assistance in turning this thing around before it passes the point of no return- a time which is quickly approaching. Please let me know your thoughts and suggestions for next steps.

Best,

John

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From: Jones, Cory  
Sent: Monday, April 10, 2006 5:09 PM  
To: cap; Williams, Gina  
Cc: Sepenuk, John; ikegami@hbst.net; nakamura@hbst.net; b-ba371@ke.netyou.jp; Nakamura, Hisashi;  
Yamatoya, Lisa  
Subject: Kiba Eps 1-4 Critique

We will follow up with a list of "unusable" content later, but as a good rule of thumb, people being viciously murdered is not acceptable for children's TV.

Please also note that the number of action minutes in this analysis is VERY generous, we have yet to see action we want or that displays our card game drivers, AT ALL!

I do not believe that the TV show as it is will sell trading cards.

-chj

### **Kiba, Episodes 1-4 Critique**

The purpose of this document is to evaluate the first four episodes of the Kiba anime series. It will highlight important places where the anime is not meeting expectations of the brand.

#### **Key Points**

1. This brand's principal driver is combat. Episodes that are short on action jeopardize the brand. Seeing episodes with only 3 out of 22 minutes devoted to action is unacceptable.
2. Following that, it is imperative that our combat must be exceptional. This means engaging and action-packed fights that are well-choreographed, showcasing the wide variety of a shardcaster's powers.
3. The most powerful weapons in a shardcaster's arsenal are his shard spirits. Thus they should be principal players in most combats. Their fighting must be as compelling as the combat of their shardcasters.
4. To this end shard spirits must also appear real, substantial, and dangerous.
5. Shardcasters must be shown to have multiple shard spirits in their possession, rather than just a single "Guardian Spirit"

## **6. Episode 1**

### **Non-Fighting Action Sequence Summary:**

**4:30 - 5:00 (0:30 total)** – Xed is surprised by the police, who chase him down alleys, eventually surrounding him. He fights with them and leaps off the stairwell to freedom.

**15:45 - 16:45 (1:00 total)** – Noah hijacks his ambulance and chases after the police cars that are taking Xed away. He forces them to crash, spectacularly.

**20:20 - 20:50 (0:30 total)** – A Zymot Shardcaster summons a monster (first time in the series), and Xed appears on the battlefield in a windstorm.

(2:00 of non-fighting action)

### **Fighting Sequence Summary:**

**11:05 - 11:35 (0:30 total)** – Zico and Roya spar in a field in Templar.

The choreography of this fight, short as it is, should be the standard for all future fights. Shardcasters and Shard Spirits should fight with this much skill and excitement.

**13:25 - 15:00 (1:35 total)** – The teacher reveals himself to be a Tusk, kills another teacher and attacks Xed. Xed's mother appears and fights against him.

Aside from the lack of shard spirits, this fight is exciting and engaging. Again, a very good starting point.

(2:05 of fighting action)

### **Comments**

This episode is an example of meeting the minimum requirements while accepting storytelling constraints. Most importantly, the viewer does not go more than five minutes without enjoying an action sequence of some kind. Four minutes of total action out of twenty-two is a little low, but considering that this was an introductory episode, it is satisfactory.

The choreography of the two fighting sequences was exciting and focused on action. Overall, however, they felt short. The fight with the teacher was extended with dialogue, and more actual fighting would have made a big difference.

## Episode 2

### Fighting Sequence Summary:

**1:30 - 3:20 (1:50 total)** – Zico battles a Zymot shardcaster as Xed watches, terrified.

This fight has a couple of problems. The most glaring is that the bulk of the action is not focused on the monsters. At 2:36 we see an example of how the monsters can threaten the shardcasters directly, but for the rest of the fight the monsters are completely incidental. We return to them at 3:06 only to see Firon cut the scorpion-man in half. It's hard to excite someone about a monster that does next-to-nothing and then dies. This could've been very exciting.

There are two minor sequences at 7:20 (Xed confronted by guards) and 9:10 (man chased by Zymot Shardcaster) but neither is very long or action-packed.

**11:50 – 13:30 (1:40 total)** – Xed fights with Templar guards, who surround him. Roya summons Sophia Darkbinder, who knocks out the guards.

This sequence had very little actual action. Xed's rooftop fight was good, but then there was a lot of standing around and watching Sophia. Not a very compelling battle.

Xed gets knocked out by Dumas at 14:20, but again it was a short sequence, not a fight.

**18:20 - 20:40 (2:20 total)** – Xed and Roya are surprised by the Zymot Shardcaster at the bridge. He summons two monsters. Roya summons Sophia. Xed tries to attack but is knocked down. Amir Gaul appears and kills the two enemy spirits.

This fight had some good things going for it. First, we see a shardcaster with more than one shard spirit. This is VERY important. We need our audience to see that shardcasters have an array of monsters to summon, even if they favor one. Second, the monsters are the focus of this fight. This helps reinforce them as a shardcaster's primary weapon.

That said, there are still problems with this fight. The monsters are mostly still, struggling in hand-to-hand combat. Contrast this with the acrobatics of the human-on-human combat and you can see that there is a big difference in quality. We need these monsters to behave like real fighters. We need to see them move and strike and block and parry. Grappling does not make for a good fight.

Also, the monsters still seem very ethereal. If they looked more actual, they would be more menacing and engaging.

(5:50 total)

### Comments:

Having to wait 8 minutes between serious action sequences borders on unacceptable, particularly when the fight sequences aren't action-packed. Rather than have the two small altercations at 7:20 and 9:10, we should have had a longer single fight.

Though the total time for the fight sequences is almost six minutes, the fights feature significant lulls in the action. While this would be acceptable if the fights were longer, stretching 30 seconds of action to 90 without adding much value is not.

In this episode we see our first piece of collection behavior. At 10:00 we see Xed receive a shard from Zico and place it in his armature-thing. This sets a good precedent for later shard-acquiring episodes.

### Episode 3

#### Fighting Sequence Summary:

**4:35 - 5:35 (1:00 total)** – Xed arrives at Dumas's farm and immediately attacks him, looking for revenge for their last encounter. He dodges the big man's punch, and then strikes at him with his sword over and over. Dumas does not counterattack, and dodges every strike easily. Xed exhausts himself and yields.

This fight is not very good. It amounts to Xed swinging his sword for a minute. It's done in a series of quick cuts, so not even Dumas's dodges are compelling.

**19:20 - 21:20 (1:50 total)** – Zymot troops rush the gate. Robes appears, brandishing his sword. The Zymot summon a horde of shard spirits. Robes begins to cut them down with the help of Belladonna, and then Dumas and his spirit show up, and the two wreck house.

This fight should have been awesome, but it fell short in a couple important ways. First, the bulk of the action happens in short cuts, so we don't see any continuity. This makes the fight seem shorter than it is. It's an even bigger problem because Robes and Dumas outclass their opponents entirely, so there isn't much actual fighting, just killing blows.

Ignoring that, the monsters are not interesting fighters, appearing only to kill or be killed. They also appear unreal, further undermining their ability to engage the viewer. Why is the choreography of the monster fights so inferior to the choreography of the human fights? The shard spirit fights need that kind of intensity.

(2:50 total)

#### Comments:

We see Dumas use a healing shard at 13:20. This sets a good precedent for shard use outside of combat, as well as showing the variety of things that shards can do.

Under three minutes of action is absolutely unacceptable for this brand. Also unacceptable is the fact that our viewers had to wait the entire episode for a fight sequence of any substance.



## Episode 4

### Fighting Sequence Summary:

**14:00 – 15:15 (1:15 total)** – The opening rounds of the joust. We see Mickey defeated, Roya and Robes triumphant.

These are three short vignettes, with limited action. In Mickey's battle, the monsters appear more real and present than they have in previous episodes. In Roya's, we again see that more detail is given to human-on-human combat, with longer shots and more dynamic interactions.

**17:00 – 17:20 (0:20 total)** – Xed, pretending to be Mickey, battles a punk.

This fight was entirely swordplay. The more fights like this we have, the more we undermine the brand.

**17:40 - 18:20 (0:40 total)** – Montage of Joust fights.

Not much to see here. Pretty standard montage fare. Again, monsters are not highlighted. We can't have monsters taking a back-seat to shardcasters at every stage.

**18:50 - 20:00 (1:10 total)** – Xed fights a large-eared opponent in the joust.

Another point where we see a shardcaster use multiple spirits. However, we don't get to see them DO anything, because Amir Gaul shows up and dispatches them quickly. This fight would have been MUCH more compelling if we had seen a little back-and-forth between Xed and his opponent before Amir Gaul showed up.

(3:15 total)

### Comments:

Again, our audience should not have to wait fourteen minutes for a fight. While Xed does have a run-in with Robes at 12:10, it is a VERY short affair and hardly counts.

For an episode that was entirely about a Joust, there was surprisingly little time actually spent in the arena. While the finals between Robes and Xed will (we hope!) involve a large, complicated fight, that is no reason to skimp on action in this episode. Even including one fight of medium complexity two minutes in length would have gone a long way to saving this episode, particularly since our audience had to wait so long for it.

Aside from Amir Gaul's appearance, this episode was short on shard spirit combat. We need to see shard spirits fighting with the same intricacy as their shardcasters.